

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15372 of Richard L. Flax and Katherine Alley, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 201.1) to allow a flat in an R-1-B District at premises 2400 Wyoming Avenue, N.W., (Square 2504, Lot 805).

HEARING DATE:           October 17, 1990  
DECISION DATE:         October 17, 1990     (Bench Decision)

SUMMARY OF EVIDENCE OF RECORD:

1.     The subject property is located at 2400 Wyoming Avenue, N.W. It is situated on the southwest corner of Wyoming Avenue and 24th Street and it is zoned R-1-B.

2.     The subject lot is rectangular in shape and consists of 4,631 square feet in land area. The lot is 50 feet wide and 95 feet deep. It is improved with a two-story with basement, brick, detached dwelling built in 1923. The lot does not have alley access.

3.     The upper portion of the structure is used by the owners/applicants as a residence. The lower portion contains a basement which has its own kitchen and bathroom facilities. The basement is rented as a separate living unit. The basement area is not visible from the street.

4.     The applicants request a variance from the use provisions to allow the property to be used as a flat. The R-1-B District in which the property is located permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. The Zoning Regulations do not permit two-family dwellings, or flats, in the R-1-B District.

5.     The applicants testified that the basement unit existed when they purchased the property in 1985. They believe that the dwelling has contained the basement unit for 25 years or more. The applicants testified that there is a walkway that measures about three feet in width located between the subject property and the adjacent property. This walkway leads to the basement portion of the structure. From the inside of the structure, a stairway connects the upper and lower living quarters. The applicant further testified that most of the time, both families enter and leave the house through the garage which is located on the basement level. Both families use the laundry facilities that are located

on this lower level, and the applicant also uses the basement for various other activities. The applicants testified that a door separates the basement from the laundry area.

6. The applicants testified that there is no separate mailing address for the tenants. The tenants' mail comes to the applicants' front door.

7. The applicants testified that the structure could be used as a single-family residence. However, their tenants provide emergency child care services for them and to lose this service would work a considerable hardship on the applicants.

8. The applicants testified that Advisory Neighborhood Commission (ANC) 1D and most of their neighbors support the application. Therefore, granting the variances would not cause substantial detriment to the public good. The applicants testified that to allow the use to continue would make the area safer due to the presence of people.

9. The Office of Planning (OP) by report dated October 10, 1990, and through testimony at the hearing, recommended denial of the application. OP stated that the applicants have not demonstrated that an undue hardship would result if the property is not used as a two-family flat. Further, OP was unable to identify the exceptional circumstance or situation that would prevent the applicants from using the property as it is zoned. OP was of the opinion that the property is not unique because of shape, topography, historic characteristics, or other conditions associated with the land and its use.

OP stated that the Zoning Regulations specifically prohibit the use of a single structure in the R-1 District for multi-family use for the following reasons: (1) the R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas; and (2) to stabilize residential areas and to promote a suitable environment for family life. For these reasons, only a few additional and compatible uses are permitted. OP stated further that the intent of the Zoning Regulations, as it relates to R-1-A and R-1-B zoned areas, is to retain quiet, stable, residential areas; to protect these areas from incompatible uses; and to promote low density residential living. In OP's opinion, the applicants' proposal does not promote this concept, and use of the dwelling as a two-family flat would impair the intent of the Zoning Regulations.

Finally, OP stated that preserving the zoning integrity of neighborhoods such as Sheridan-Kalorama is not only important for the short-term, but is most important for the long-term evolution of the District of Columbia. OP therefore recommends denial of the application.

10. By report dated October 4, 1990, the Metropolitan Police Department stated that it does not appear that the application will affect the public safety in the immediate area or that it will generate an increase in the level of police services now being provided. Accordingly, the department does not oppose the application.

11. Advisory Neighborhood Commission (ANC) 1D, by written report received on October 10, 1990, expressed its support for the subject application. The ANC indicated that more time should be devoted to the issue of residential uses as it relates to the high real estate taxes in the Sheridan-Kalorama area.

12. A neighbor residing at 2135 Bancroft Place, N.W. testified in support of the application. She testified that she is the president of the Sheridan-Kalorama Council for Tax Equity. She testified that property taxes in the area have increased as high as 125 percent over the last two years. Because of the increase, many homeowners are unable to afford their homes without some supplemental income.

The neighbor in support further testified that ten percent of the homes in the area are up for sale. These homes then become targeted for embassies, chanceries and other uses. Furthermore, the city loses taxes when nontaxable uses are established in these large single-family houses.

The supporting neighbor testified that uses such as the one proposed provide housing and increased safety. She stated that from an economic perspective, these very large houses will have to have uses other than single-family dwellings.

13. No one appeared at the hearing to express opposition to the application.

FINDINGS OF FACT:

1. The Board finds that the shape and size of the lot is similar to other properties in the area.

2. The Board finds that the structure was originally designed as a single-family dwelling.

3. The Board finds that the property is located in a district designed for single-family, rather than multi-family dwellings.

4. The Board finds that the tax assessment of the property is not a proper factor to consider in a variance application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicants are seeking a use variance to allow a flat in an R-1-B District. Granting such a variance requires a showing of substantial evidence of an undue hardship upon the owners arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board must find that the property cannot be used for the purpose for which it is zoned. The Board further must find that the requested relief can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose or integrity of the zone plan.

The Board concludes that the applicants have not met this burden of proof. The Board concludes that the applicants have failed to demonstrate that they suffer an undue hardship as a result of some physical aspect or extraordinary condition of their property. The applicants have not demonstrated a condition of their property which prevents its use as a single-family residence.

The Board concludes that to allow the proposed use would not cause substantial detriment to the public good. However, the Board concludes that to allow a flat in an R-1-B District would be of substantial detriment to the intent, purpose and integrity of the zone plan.

The Board has accorded ANC-1D the "great weight" to which it is entitled.

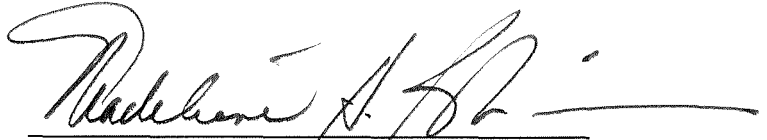
In light of the foregoing, it is hereby **ORDERED** that the application is **DENIED**.

VOTE: 3-0 (John G. Parsons, Paula L. Jewell and Carrie L. Thornhill to deny; Charles R. Norris not present, not voting).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Acting Director

FINAL DATE OF ORDER: APR 24 1992

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15372Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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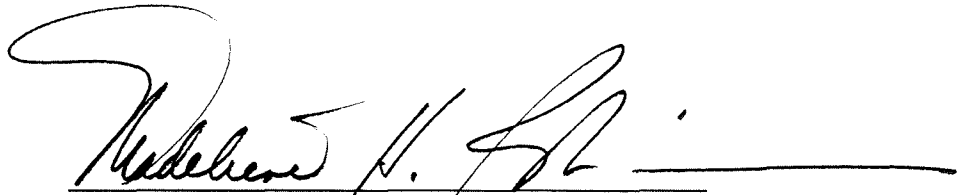
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As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 24 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard L. Flax  
2400 Wyoming Avenue, N.W.  
Washington, D.C. 20008

Marie Drissel  
2135 Bancroft Place, N.W.  
Washington, D.C. 20008

Breck Arrington, Chairperson  
Advisory Neighborhood Commission 1-D  
1900 Connecticut Avenue, N.W.  
Washington, D.C. 20009

  
MADELIENE H. ROBINSON  
Acting Director

DATE: APR 24 1992

15372Att/bhs